(hereinafter "the '554 patent"), in view of Peterson, U.S. Patent No. 6,266,525 (hereinafter "the '525 patent"). Applicants respectfully traverse the art grounds of rejection.

The '554 patent teaches "reassigning transmission channels in a wireless communication network based on interference levels and channel quality using forwards and backwards reassignment." (H'mimy, col. 2, lines 31-34). The '554 patent further teaches that "the channel quality and interference level of the preassigned transmission channel are continually monitored, and a transmission channel is reassigned to the incoming calls when the monitor levels of channel quality and interference levels change beyond a set predetermined threshold." (H'mimy, col. 2, lines 48-53). As admitted by the Examiner, the '554 patent does NOT teach deciding whether to grant or deny access to a subscriber station seeking access to a communication system.

The '525 patent discloses a method for detecting fraudulent use of a communication system by assigning codes or randomly generating codes for the communication access between the subscriber station and a fixed end. The '525 patent grants or denies access to subscriber stations in an effort to prevent fraudulent use of the communication system, based on allocation of communication resources (namely, the assigned or generated codes assigned to the subscribing stations). (Peterson; Col. 5, lines 4-10; Col. 6, lines 11-19, 36-44).

Claim 1 In rejecting claim 1, the Examiner alleges that one skilled in the art would have combined the teachings of the '525 patent with the '554 patent "because this would allow a wireless communication system to maintain a specific level of performance." How providing the access methodology of the '525 patent to the channel re-allocation methodology of '554 patent maintains a specific level performance is not understood by Applicant. To what "performance" is the Examiner referring?

Applicant respectfully submits that one skilled in the art would not have found it obvious to combine the teachings of '525 patent with the '554 patent. There is no need for the '554 patent to use the teachings of the '525 patent. In particular, the '554 patent teaches the re-allocation of channels on the network based on the channel quality and interference level. The '554 patent has no need for granting or denying access to a subscriber station seeking access to a communication system based on a comparison code or other delegated system resource, as taught by the '525 patent, to perform the re-allocation process of the '554 patent. Nor does the opposite hold true. The access or denying of access to the subscriber stations in the '525 patent is strictly based on the resources, namely the assigned codes, that are generated and assigned by the communication system. There would be no reason for the system in the '525 patent to use or to need the performance indicators of the

system in the '554 patent for the access methodology of the '525 patent. Thus, it would not have been obvious to one of ordinary skill in the art to combine the teachings of the '525 patent with the '554 patent

The Applicant respectfully asserts that the Examiner has further failed to consider the teachings of the '554 patent and the '525 patent as a whole. Having not considered these patents as a whole, the Applicant submits that the Examiner has impermissibly engaged in picking and choosing the teachings of the '554 and the '525 patent in an attempt to reconstruct the claimed invention. According to the Federal Circuit, it has been deemed impermissible for an Examiner to engage in an exercise of picking and choosing amongst two cited references to reconstruct an applicant's claimed invention. As support for this position, the Applicant submits the following:

In Panduit Corp. v. Dennison Manufacturing Co., 227 U.S.P.Q. 337, 344 (Fed. Cir. 1985), *vacated and remanded on other grounds*, 229, U.S.P.Q. 478 (1986) the Federal Circuit stated:

> The well established rule of law is that each prior art reference must be evaluated as an entirety, and that all of the prior art must be evaluated as a whole. *See W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 727 F.2d at 1550, 220 U.S.P.Q. at 311; *In re Kuderna*, 426 F.2d 385,390,165 U.S.P.Q. 575, 578-79 (CCPA 1970).

And, in Bausch & Lomb v. Barnes-Hind/Hydrocurve, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986), the Federal Circuit stated:

> As the former Court of Customs and Patent Appeals held:
>
> It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as well support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. *In re Wesslau*, 353 F.2d 238, 241, 247 U.S.P.Q. 391, 393 (CCPA 1965); *see also In re Mercer*, 515 F. 2d 1161, 1165-66, 185 U.S.P.Q. 774, 778 (CCPA 1975).

As demonstrated above, the Federal Circuit has directed that prior art references must be considered as whole and that it is impermissible for the Examiner to pick and choose only so much of the reference as to support the Examiner's position and ignore other teachings necessary for a full appreciation of what the reference suggests.

As a whole, the '554 patent teaches reallocation of channel resources to the communication subscribers based on channel quality and interference levels of pre-assigned transmission channels. As a whole, the '525 patent teaches granting access or denying access to the subscriber stations in the system, strictly based on the resources (namely the assigned codes) that are generated and assigned by the communication system. Consequently, when viewing the '554 patent as a whole and assuming one skilled in the art would have combined the

'525 patent with the '554 patent, the combination of these patents would result in a system for reallocating channels to the subscribing stations of the communication system based on interference levels and channel quality, but deny or grant access to the subscribing stations based on a code allocated or randomly generated by the system (having nothing to do with any parameter measured by the system). Therefore, the combination of the '554 and the '525 patent, fails to disclose or suggest "deciding whether to grant or deny access to the subscriber station seeking access to the wireless communication system based on a comparison of the first performance indicator to the obtained blocking threshold value" as recited in claim 1.

For the reasons set forth above, claim 1 is not rendered obvious to one skilled in the art by the '554 patent in view of the '525 patent.

Claims 2-3, and 6 Claims 2-3, and 6 are allowable for at least the reason that they depend directly and/or indirectly from allowable claim 1. Applicant respectfully request that the Examiner withdraw this art grounds of rejection.

Claims 4-5, 7-12, 15-18 and 21-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the '554 patent in view of the '525 patent and additionally Egner et al. (U.S. Patent No. 6,223,041 (hereinafter "the '041 patent"). Applicant respectfully traverses this art grounds of rejection.

Claim 1 (in further view of the '041 patent)

As indicated above, with reference to the claim 1 rejection, one skilled in the art would not have found it obvious to combine the teachings of the '554 patent of the '525 patent. In addition, the resulting combination fails to disclose or suggest "deciding whether to grant or deny access to the subscriber station seeking access to the wireless communication system based on a comparison of the first performance indicator to the obtained blocking threshold value" as recited in claim 1.

The '041 patent discloses a system for reconsidering or reassigning channels among the cells/sectors radio propagation and cell/sector proximity to accurately predict performance when the assignments are implemented. Thus, the '041 patent reallocates subscriber stations "...when loading in any given cell exceeds a loading limit...or when such other operation(s) occur as to warrant a reallocation of channels." (Egnar; Col. 10, lines 22-27).

Though one skilled in the art may find the teachings of the '041 patent and the '554 patent closer to being properly combinable, the combination of the '041 patent and the '554 patent fail to disclose claim 1. The '554 patent teaches reallocation of subscriber stations based on interference levels or channel quality, while the '041 patent teaches reallocation of subscriber stations based on cell/sector measurements. Thus, the combination of the '041 patent with both the '554 patent still

fail to disclose "deciding whether to grant or deny access to the subscriber station seeking access to the wireless communication system based on a comparison of the first performance indicator to the obtained blocking threshold value" as recited in claim 1.

Also, the Applicant asserts that the combining of the '525 patent with either the '554 patent or the '041 patent is improper. Neither the '041 patent (teaching dynamic radio resource reallocation to subscribing stations in a wireless communication system based on cell/sector measurements), nor the '554 patent (teaching reallocation of resources to subscribing stations in a communication system based on interference levels and channel quality) have a need for a system for detecting fraudulent use of communication system by denying or granting access to the communication subscribers because of an allocated or preassigned code as taught by the '525 patent. Thus, there would have been no motivation for one of ordinary skill in the art at the time of the invention to combine the '525 patent with the teachings of the '554 or the '041 patent.

Similarly, as asserted above, the Examiner has not considered all three patents as a whole. Supposing that the '525 patent were combinable with the teachings of the '041 patent and/or the '554 patent, the resulting combination would yield a system for reallocating channels to the subscribing stations of the communication system based on

interference levels, and/or channel quality, and/or cell/sector channel interference, but deny or grant access to the subscribing stations based on a code allocated or randomly generated by the system, not a parameter measured by the system. Therefore, the combination of the '554 and the '525 patent and the '041 patent, fails to disclose or suggest "deciding whether to grant or deny access to the subscriber station seeking access to the wireless communication system based on a comparison of the first performance indicator to the obtained blocking threshold value" as recited in claim 1.

For the reasons set forth above, claim 1 is not rendered obvious to one skilled in the art by the '554 patent in view of the '525 patent, further in view of the '041 patent.

Claims 4-5, 7-11 Having shown that Claim 1 is allowable, Claims 4-5, 7-11 are allowable for at least the reason that they depend directly or indirectly from allowable claim 1. Applicant respectfully request that the Examiner withdraw this art grounds of rejection.

Claim 12 As previously stated, the combination of the '525 patent with the '554 patent and the '041 patent is improper. Were it proper to combine these art references, the combination of the '554 patent, the '525 patent and the '041 patent, still fail to disclose or suggest "deciding whether to grant or deny access to the subscriber station seeking access to the wireless communication system based on a

comparison of the first performance indicator to the determined blocking threshold value" as recited in claim 12.

For the reasons set forth above, claim 12 is not rendered obvious to one skilled in the art by the '554 patent in view of the '525 patent, further in view of the '041 patent.

Claims 13-18 Having shown that Claim 12 is allowable, Claims 13-18 are allowable for at least the reason that they depend directly or indirectly from allowable claim 12. Applicant respectfully request that the Examiner withdraw this art grounds of rejection.

Claim 21 Generally, the same reasoning rendered with respect to claims 1 and 12 (the improper combination of the '554, '525, and the '041 patents) also applies to claim 21. In addition, if the patents could have been properly combined, the resulting combination fails to disclose or suggest "a blocking manager deciding whether to grant access of the subscriber station to the wireless communication system based on a comparison of the measured performance parameter and the detected loading level to the desired relationship" as recited in claim 21.

For the reasons set forth above, claim 21 is not rendered obvious to one skilled in the art by the '554 patent in view of the '525 patent, further in view of the '041 patent.

Claims 22-23 Having shown that Claim 21 is allowable, Claims 22-23 are allowable for at least the reason that they depend directly or

indirectly from allowable claim 21. Applicant respectfully request that the Examiner withdraw this art grounds of rejection.

Claims 19-20 The claims 19-20 were objected to by the examiner, because the Examiner claimed they included reference characters which were not enclosed within parentheses. The Applicant asserts this objection is improper. Claims 19-20 include mathematical expressions. These mathematical expressions include variables used in the detailed description. However, claims 19-20 do not include reference characters also used in the detail description (e.g. **S16** referring to the grant access block in Fig. 2). Therefore, the Applicant respectfully requests the Examiner to remove this grounds of objection.

CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application before allowance thereof, the Examiner is respectfully requested to contact the Terance Madden at (703) 390-3363.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. 1.16 or under 37 C.F.R. 1.17; particularly, extension of time fees.

Respectfully submitted,

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